IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/02/2006

CORAM

THE HON'BLE MR.JUSTICE C.NAGAPPAN

A.S.No.129 of 1990

1.T.Baby Ammal
W/o.Thanigachala Mudaliar

2.Jamuna
3.Vimala
4.Krishnaveni
5.Perumal
6.Jeevarathinam
D/o.Thanigachala Mudaliar

7.Vijayalakshmi
8.Malarammal
D/o.Thanigachala Mudaliar
(Appellants 5 to 7 are minors,
rep. by their mother and natural
guardian, the first appellant) .. Appellants

-Vs-

Vinola Ammal
W/o.Kothandarama Odayar ..Respondent

Appeal filed under Section 96 C.P.C. against the judgment and decree, dated 13.12.1986, made in O.S.No.568 of 1984 on the file of the I Additional Sub- Judge, Pondicherry.

!For appellants : Mr.Jyothish Chander
for Mr.T.P.Manoharan

^For respondent : Mr.T.R.Rajaraman

:JUDGMENT

This appeal is preferred against the judgment and decree, dated 13.1 2.1986, made in O.S.No.568 of 1984 on the file of I Additional Sub- Judge, Pondicherry.
The plaintiffs are the appellants.

2. The case of the appellants/plaintiffs is that the respondent/ defendant received cash consideration of Rs.3,000/- on 27.9.1974, Rs.2 ,000/-

on 5.2.1975, Rs.4,500/- on 7.7.1976, Rs.8,000/- on 18.3.1977 and Rs.6,200/- on 9.3.1979 and in all totalling a sum of Rs.23,700/- from them and executed separate pronotes for the consideration on each date mentioned above agreeing to repay t he same with interest at 12% and the defendant did not pay any amount on the pronotes, pursuant to which, demand notice was issued through the counsel on 26 .6.1984 and even after receiving the same, no payment was made and hence the suit is filed and the suit is not barred by limitation since under local French law, suit could be filed within 30 years.

3. The respondent/defendant in her written statement has denied the averments in the plaint and stated that there was no cash transaction between the parties and they had only business transaction of purchase and sale of rice, in the course of which, such documents used to be given and as such there was never any passing of consideration and the defendant also did not

admit the execution of the pronotes and the suit claim is barred by limitation and the French law is not applicable to the proceeding for recovery of money due under promissory note.

4. The Trial Court framed five issues and P.W.1 was examined and Exs.A1 to A7 were marked on the side of the plaintiffs and the husband of the defendant was examined as D.W.1 and no document was marked on their side and the Trial Court held that the suit claim is barred by limitation and dismissed the suit with costs. Aggrieved by the same, the plaintiffs have preferred the present appeal. In this Judgment, for the sake of convenience, the parties are referred to as arrayed in the suit.

5. The points for determination in this appeal are:
(i) Whether the suit claim is barred by limitation.
(ii) Whether the plaintiffs are entitled for the suit claim.

6. Exs.A1 to A7, the suit promissory notes, came into existence during the period from 1974 to 1979. The suit was filed on 4.9.1984 i.e., beyond the period of three years from the date prescribed for payment as per Indian Limitation Act. The learned counsel for the appellants submits that though the conclusion of the Trial Court that the suit claim is barred by limitation is correct, the reasoning, based on applicability of Article 179 read with 185 of Code de Commerce to the suit transaction, is erroneous since Code de Commerce is not applicable to pronote transaction.

7. The specific case of the plaintiffs is that the French Civil Code, which prescribes 30 years limitation, is applicable to pronote transaction and hence the suit claim is not time barred. The Trial Court has found that Article 2262 of French Civil Code, which prescribes 30 years of limitation, is applicable only to prescription of title by adverse possession. Moreover, the decision of the Supreme Court in JUSTINIANO AUGUSTO DE PIEDADE BARRETO v. ANTONIO VICENTE DA FONSECA AND OTHERS (AIR 1979 SUPREME COURT 984) holding that Portuguese Civil Code dealing with the subject of limitation is local law within Section 29(2) of the Limitation Act and the provisions of the Portuguese Civil Code relating to limitation continue to be in force in the

Union Territory of Goa, Daman and Diu has been overruled by the Supreme Court in the recent decision in SYNDICATE BANK v. PRABHA D.NAIK AND ANOTHER ((2001) 4 Supreme Court Cases 713).. Their Lordships in the above decision have laid down as follows:

"23. ..... At the cost of repetition we say that while implied repeal is not to be readily inferred but in the contextual facts, upon scrutiny, we cannot but hold that in the wake of the factum of the Limitation Act coming into existence from 1.1.1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in Justiniano case stands overruled. There is one general law of limitation for the entire country, being the Act of 1963, and the Portuguese civil law cannot be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and in any event, question of saving of local law under the Limitation Act of 1963 does not and cannot arise."

8. In view of the above statement of law by the Apex Court, neither the provisions of French Civil Code nor the provisions under Code De Commerce are applicable to the Union Territory of Pondicherry insofar as the Law of limitation is concerned.
9. As already seen, the money claim is made after a period of three years and hence the claim is barred under the provisions of the Indian Limitation Act, 1963 and the plaintiffs are not entitled to the suit claim. The points are answered accordingly.

10.There are no merits in the appeal and the same is dismissed. No costs.

Index: yes.
Internet: yes.
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To
1.The I Additional Sub-Judge,
Pondicherry.

2.The Section Officer,
V.R.Section,
High Court, Madras.

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